

83-1041

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ALEXANDER L STEVAS,
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR,
GORDON H. DENTON,
and
L.J. MOORE,
Appellants,

v.

STATE OF NORTH CAROLINA,
Appellee.

APPEAL FROM THE
NORTH CAROLINA COURT OF APPEALS
THREE B DIVISION

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED UPON APPEAL

Does N.C. Gen. Stat. § 146-79, which provides that, in all suits involving title to land in which the State of North Carolina is a party, title to the land in question is presumed to be in the State, violate the due process clause of the fourteenth amendment to the United States Constitution, both on its face and as applied in this case?

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OPINIONS BELOW

The judgment of the Superior Court in and for Craven County, North Carolina, dated August 26, 1981, is unreported and is reproduced in the Appendix at A-3 to A-17 . The opinion of the North Carolina Court of Appeals, Three B Division, dated February 15, 1983, is reported at ____ N.C. App. ____ , 300 S.E.2d 42 (1983), and also is included in the Appendix at A-18 to A-32 . The order of the Supreme Court of North Carolina dismissing the appeal and denying discretionary review, dated June 2, 1983, is set forth in the Appendix at A-33 to A-36. The order of the Supreme Court of North Carolina denying a motion for reconsideration, dated

September 27, 1983, appears in the Appendix at A-37 to A-38 .

JURISDICTION

The judgment of the North Carolina Court of Appeals, Three B Division, affirming the North Carolina Superior Court's holding that N.C. Gen. Stat. § 146-79 was constitutional, was entered on February 15, 1983. On June 2, 1983, the Supreme Court of North Carolina dismissed an appeal and denied discretionary review of the case. Thereafter, on September 27, 1983, the Supreme Court of North Carolina denied a motion for reconsideration. A notice of appeal to the United States Supreme Court was filed with the North Carolina Court of Appeals on December 19, 1983. This

Jurisdictional Statement was timely filed. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(2) (1976).

CONSTITUTIONAL PROVISIONS AND
STATUTES INVOLVED

U.S. Const. amend. XIV, § 1:

No state shall . . . deprive any person of life, liberty, or property, without due process of law

N.C. Gen. Stat. § 146-79 (1983):

In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until

the other party shall show that he has a good and valid title to such lands in himself.

STATEMENT OF THE CASE

This appeal asks this Court to consider whether a North Carolina statute, N.C. Gen. Stat. § 146-79, which provides that in all suits involving title to land in which the State of North Carolina is a party, title to the land in question is presumed to be in the State, violates the due process clause of the fourteenth amendment to the United States Constitution, both on its face and as applied in this case. The North Carolina Court of Appeals upheld the constitutionality of the statute, and the Supreme Court of North Carolina

declined to review the question.

On March 28, 1978, the appellee STATE OF NORTH CAROLINA (the State) instituted an action in the North Carolina Superior Court in and for Craven County against the appellants J.T. TAYLOR, JR., ZACHARY TAYLOR, and GORDON H. DENTON (the Taylor group) to remove a cloud on title to certain land in Craven County, to restrain trespass and timber removal, and to recover damages for timber wrongfully removed. Upon motion by the Taylor group, the court joined as defendants the appellant L.J. MOORE, Boy's Ranch Foundation, Alice S. Heath, Clifford Earl Heath, and the minor Donna Karen Heath. Subsequently, the court allowed Larry J.

Heath to intervene and align himself with the other Heaths. The court later dismissed another intervenor, Floyd White, and Boy's Ranch Foundation from the case.

Each group of defendants filed answers alleging exclusive ownership of the land in question. The Taylor group and L.J. Moore also raised as a defense the unconstitutionality of N.C. Gen. Stat. § 146-79 under the due process clause of the fourteenth amendment to the United States Constitution. The court denied this defense by order entered June 28, 1980, to which the Taylor group and L.J. Moore took exception and gave notice of appeal.

The court severed the issues of title and damages for separate trial.

At trial before a jury on the issue of title, the State presented the testimony of Robert T. Newcomb, a surveyor, who surveyed the land in question and described monuments he found and those he placed on the ground. He also testified concerning an aerial photograph he prepared and a survey map delineating the boundaries of the land. On cross-examination, he testified that the land was located within the boundaries of Land Grant No. 819, issued by the State to one David Allison in 1795.

At the close of evidence offered by the Taylor group, the Heath group, and L.J. Moore, the State, relying on the presumption created by § 146-79, moved for a directed verdict. Concluding that none of the defendants had "salvaged a lawful

title" and that "there is not a jury verdict arising on this evidence," the court granted the State's motion and entered judgment declaring the State to be the fee simple owner of the 2,705.0254-acre tract. See A-7 to A-15.

On appeal brought by all defendants, the North Carolina Court of Appeals, Three B Division, first held that the presumption created by § 146-79 was constitutional. In the court's view, the presumption was reasonable because title to all land in North Carolina, except that previously granted by the Crown, originated from the State, and the State possessed ultimate title to the soil. In addition, although none of the defendants had challenged the statute on this ground, the court

stated that § 146-79 did not authorize a "taking" of property without just compensation. See A-23-24. Having established the validity of § 146-79, the court then reviewed the evidence and concluded that none of the defendants had good title to the land because none could trace title with sufficient specificity back to a grant from the State. Because none of the defendants had established title satisfactorily, the presumption of § 146-79 operated to vest title in the State. See A-25 to A-32.

The defendants appealed the decision to the Supreme Court of North Carolina, raising the constitutional issue, but the court declined to review the case. See A-33 to A-38. Having filed a Notice of Appeal with the North Carolina Court of Appeals on December 19,

1983, the appellants J.T. TAYLOR, JR., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE now request this honorable Court to review the constitutional issue. This Jurisdictional Statement was timely filed.

REASON FOR PLENARY CONSIDERATION

THE DECISION OF THE NORTH CAROLINA COURT OF APPEALS UPHOLDS A STATE STATUTE THAT VIOLATES THE FEDERAL DUE PROCESS RIGHTS OF THE APPELLANTS AND ALL OTHER SIMILARLY SITUATED LANDOWNERS IN NORTH CAROLINA.

The decision of the North Carolina Court of Appeals in State v. Taylor, ___ N.C. App. ___, 300 S.E.2d 42 (1983), reproduced at A-18 to A-32. upheld a state statute, N.C. Gen. Stat. § 146-79 (1983), that violates the federal due process rights of the appellants J.T. TAYLOR, JR., ZACHARY

TAYLOR, and GORDON H. DENTON (the Taylor group) and appellant L.J. MOORE, as well as all other similarly situated landowners in North Carolina. The statute provides in pertinent part:

In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

As interpreted by the North Carolina courts, this provision requires a party, in order to overcome the presumption of title in the State, to trace his title with specificity all the way back to a grant from the

State or Crown. E.g., Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567, 578 (1976); State v. Brooks, 279 N.C. 45, 181 S.E.2d 553, 557-58 (1971); State v. Taylor, supra, 300 S.E.2d at 44-45 [A-]; State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255, 256 (1976). This provision is unconstitutional, both on its face and as applied in this case, because the presumption it creates deprives persons with colorable title to land in North Carolina of their property interests without due process of law in contravention of the fourteenth amendment to the United States Constitution.

The statute is facially unconstitutional because the presumption it creates is patently unreasonable. Early in the century, this Court held in

Mobile, J.&K.C. Railroad v. Turnipseed, 219

U.S. 35 (1910), a civil case, that a rational connection must exist between the fact proved and the fact presumed in order for a statutory presumption to withstand a due process challenge.

In the words of this Court:

That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law . . . , it is essential that there be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.

Id. at 43. The Court consistently has applied this test in both civil and

criminal cases involving statutory presumptions. See, e.g. United States Department of Agriculture v. Murry, 413 U.S. 508, 514 (1973); Stanley v. Illinois, 405 U.S. 645, 658 (1972); Leary v. United States, 395 U.S. 6, 36 (1969); Tot v. United States, 319 U.S. 463, 467 (1943); Bandini Petroleum Co. v. Superior Court, 284 U.S. 8, 19 (1931). For example, in United States Department of Agriculture v. Murry, the plaintiff challenged on due process grounds a section of the Food Stamp Act, 7 U.S.C. § 2014(b), that made ineligible for food stamps any household that included a person under eighteen who had been claimed as a dependent child for federal income tax purposes in the preceding year by

a taxpayer who was not a member of an eligible household. This Court invalidated the statute because the presumed fact, that the child was not presently indigent, did not rationally follow from the proven fact, that a taxpayer had declared the child as a dependent on his tax return for the prior year. 413 U.S. at 514.

Similarly, in Leary v. United States, the court invalidated a criminal statute authorizing a jury to infer from a defendant's simple possession of marijuana the fact that the defendant knew the marijuana was illegally imported, because no rational connection existed between the two facts. 395 U.S. at 37-39.

Under these precedents, the presumption created by N.C. Gen. Stat. § 146-79 is unconstitutional because

the presumed fact, that the State holds title to disputed lands, does not rationally follow from the proven fact, that the State is a party to a controversy or suit in which title to land is at issue. No rational connection whatsoever exists between the two facts. Even if the underlying fact from which the presumption flows is that title to all lands in North Carolina originated in the State, no rational nexus exists between that fact and the presumption that the State still holds title to disputed lands some two hundred years later. In point of fact, the State may not be able to demonstrate title superior to that of any other claimant.

As the law presently stands, the State can sue any owner or occupier of land in North Carolina and, relying on the statutory presumption, force the defendant to give up his land if he cannot prove a chain of title extending back to a grant from the State. The presumption operates particularly harshly on private landowners because of the special problems of proof presented by vague or loose descriptions of the boundaries of tracts of land, which are common in eighteenth and nineteenth century deeds or conveyances. For example, in State v. Brooks, supra, one of the private landowners based his claim upon a grant from the State to one William Gause, a subsequent deed from William Gause to Samuel Gause,

and a later deed from Samuel Gause to William Tilly. The Gause and Tilly deeds described the land as "200 acres of the land granted on April 9, 1770, to William Gause." Because the land was not described with the specificity required by modern courts, the court in Brooks held that the Gause and Tilly conveyances were void. Thus the private party's chain of title was broken, and the State gained title to the land by operation of the presumption of § 146-79, despite the uncontroverted evidence of the State's having parted with title in 1770. 181 S.E.2d at 557-58. Because vague and uncertain descriptions of land are so common to earlier deeds and testamentary provisions, the State can utilize the pre-

sumption of § 146-79 to acquire the land of almost any private party in North Carolina, just as it did in Brooks.

The statutory presumption also operates unreasonably in situations involving adverse possession. For example, if A sued B over the ownership of Blackacre, and A proved perfect record title by mesne conveyances from the State while B proved title by twenty-six years of adverse possession against A, B would win the dispute and hold valid legal title to Blackacre. If the State brought suit against B two years later, however, B would not be able to defeat the presumption of § 146-79 because he could not prove a chain of title from the State with which he could connect himself. Neither would he be able to claim

by adverse possession against the State, because he had not possessed the property for thirty years, as is required to defeat the State's title by adverse possession. Thus the statutory presumption would cause B to lose his valid title to the land, despite clear evidence that the State had parted with its title earlier.

These examples demonstrate the unreasonableness of the presumption of title in the State created by § 146-79. Because the presumed fact is not rationally connected with the proven fact, i.e., that the State is a party to the lawsuit or, in the alternative, that the State originally held title to all land in North Carolina, the statute is invalid under the standard set forth in Turnipseed. For this

reason, the statute is unconstitutional on its face as a denial of due process of law.

In addition, the statute is unconstitutional as applied by the North Carolina Court of Appeals in this case. The State's own witness testified that the land in question was located within the boundaries of Land Grant No. 819, conveyed by the State in 1795 to one David Allison. Evidence was also presented demonstrating that on December 10, 1908, the Allison heirs and the State Board of Education executed a trust deed to George H. Roberts, Trustee, in settlement of a dispute between the Allison heirs and the State. Thus no question exists in this case that, as early as 1795, the State parted with title to the land. Application of the

statutory presumption of title in the face of evidence to the contrary is manifestly unreasonable. No rational reason exists to presume that the State still holds title to the land when the evidence conclusively demonstrates that the State parted with its title 188 years ago.

In State v. Brooks, supra, the evidence demonstrated a land grant from the State, but the private party was unable to connect his chain of title to the grant. Despite the evidence of the State's conveyance of title, the court held that the statutory presumption of § 146-79 nevertheless applied to defeat the private party's claim because, "[i]f G.S. 146-79 were interpreted otherwise, title to the subject land, under the circumstances

of this case, would be in limbo. Presumably this statutory provision was enacted to avoid such an undesirable and chaotic result." 181 S.E.2d at 560.

Contrary to the court's conclusion, title to disputed lands would not be "in limbo" without the statutory presumption. If the State were required to prove superior title just as any other party, and failed to do so, then title would rest in whichever party to the dispute was able to demonstrate the best title. Other jurisdictions have required the state as plaintiff to prove superior title to land just as a private plaintiff must, and chaos in land ownership has not resulted.

See, e.g., Short Beach Cottage Owners Improvement Association v. Town of

Stratford, 154 Conn. 194, 224 A.2d 532 (1966); State v. Phillips, 305 A.2d 644 (Del. Ch. 1973), aff'd, 330 A.2d 136 (Del. 1974); Trustees of Schools of Township No. 8 v. Lilly, 373 Ill. 431, 26 N.E.2d 489 (1940); Robertson v. State Highway Commission, 148 Mont. 275, 420 P.2d 21 (19).

The statutory presumption also operates unreasonably in this case because it places an unduly harsh burden of proof upon the Taylor group. As discussed supra, vague and uncertain descriptions of boundaries of tracts of land are common in eighteenth and nineteenth century deeds and testamentary provisions, and such descriptions generally do not withstand modern proof requirements. See State v. Brooks, supra.

The State can take advantage of this situation to gain title to land, by virtue of § 146-79, whenever a vague description appears in a private party's chain of title. This case presents such a situation. The Taylor group claimed the land in question under the following chain of title:

1. Grant No. 819 from the State of North Carolina to David Allison in 1795.
2. David Allison's death without having disposed of the lands described in Grant No. 819.
3. Trust deed dated 10 December 1908 from the Allison heirs and State Board of Education to George H. Roberts, Trustee. This deed was executed in settlement of a dispute between the Allison heirs and the State.

4. Recorded deed from Florence E. Phipps (an Allison heir) to E.S. English dated 1 January 1967.
5. Special Partition Proceeding No. N-1-232.
6. Recorded deed from Bernard B. Hollowell, Commissioner to E.S. English dated 17 November 1967.
7. Recorded deed from E.S. English to G.H. Denton dated 13 December 1967.
8. Recorded deed from G.H. Denton to Zachary Taylor dated 24 June 1968.
9. Adverse possession by the defendants Taylor and Denton.

See A-24-25. Because, in the court's view, the deed from the Allison heirs did not describe the land with sufficient specificity, the court held that the Taylor group's chain of title was broken, and the State was entitled to

the land by virtue of § 146-79 despite the undisputed evidence that the State had parted with its title in 1795.

See A-26-27.

Because the presumption of § 146-79, when applied in a case in which the evidence demonstrates a grant from the State, is without any rational basis, the presumption deprives the private parties to the land dispute of their property interests without due process of law. In light of the evidence in this case demonstrating a grant from the State to a private person in 1795, the court's application of the statutory presumption impermissibly infringed the appellants' federal due process rights. Thus the statute is unconstitutional as applied in this case.

The importance of a statutory presumption to the outcome of a lawsuit cannot be understated. As this Court observed in Speiser v. Randall, 357 U.S. 513, 520 (1958):

To experienced lawyers it is commonplace that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied.

Because the presumption created by § 146-79 so seriously jeopardizes the property rights of the appellants

J.T. TAYLOR, JR., ZACHARY TAYLOR,
GORDON H. DENTON, and L.J. MOORE, as
well as all other similarly situated
landowners in North Carolina, this
honorable Court should grant this
appeal to resolve this important
matter.

CONCLUSION

For the foregoing reasons, the appellants J.T. TAYLOR, Jr., ZACHARY TAYLOR, GORDON H. DENTON, and L.J. MOORE respectfully request this Court to grant plenary review of the decision of the North Carolina Court of Appeals, Three B Division.

Respectfully submitted,

J.T. TAYLOR, JR., ZACHARY
TAYLOR, GORDON H. DENTON,
and L.J. MOORE,
Defendants-Appellants,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of December 1983 mailed three copies of the foregoing jurisdictional statement, first class postage prepaid, to:

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APPENDIX

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JUDGMENT (Filed Aug. 26, 1981)

STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

STATE OF NORTH CAROLINA, Plaintiff)
vs.)
J. T. TAYLOR, JR., ZACHARY TAYLOR,)
and GORDON H. DENTON, Defendants)
and)
L. J. MOORE, BOY'S RANCH FOUNDATION) NO.
ALICE S. HEATH, CLIFFORD EARL HEATH,) 78CVS280
and DONNA KAREN HEATH (Minor),)
Additional Defendants)
and)
SAMUEL L. WHITEHURST, JR., Guardian)
Ad Litem, for DONNA KAREN HEATH,)
(Minor), Additional Defendants)
and)
FLOYD D. WHITE, Intervenor Defendant)
and)
LARRY T. HEATH, Intervenor Defendant)

AND)
)
)

L. J. MOORE, Cross Complainant)
& Third Party Plaintiff)
vs.)
STATE OF NORTH CAROLINA, Plaintiff)
& Third Party Defendant)
and)
J. T. TAYLOR, JR., ZACHARY TAYLOR,)
and GORDON H. DENTON,)
and)
ALICE S. HEATH, CLIFFORD EARL HEATH,)
and DONNA KAREN HEATH (Minor))
and)
FLOYD D. WHITE, Third Party)
Defendants)
)
)

AND)

LARRY T. HEATH, Cross Complainant)
& Third Party Plaintiff)
vs.)
STATE OF NORTH CAROLINA, Plaintiff)
& Third Party Defendant)
and)
J. T. TAYLOR, JR., ZACHARY TAYLOR)
and GORDON H. DENTON,)
and)
L. J. MOORE,)
and)
FLOYD D. WHITE, Third Party)
Defendants)

THIS CAUSE coming on to be heard
and being heard by the undersigned Judge
Presiding and a jury duly empaneled at
the August 3, 1981, Civil Session
of Superior Court for Craven County; and
plaintiff being represented by T. Buie
Costen, Special Deputy Attorney General,
and by R. Bryant Wall, Assistant Attorney
General; and defendants Alice S. Heath,
Clifford Earl Heath, Donna Karen Heath
(Minor) and Larry T. Heath being repre-
sented by Lamar Jones and Everette L.
Wooten, Jr., Attorneys at Law; and Samuel

L. Whitehurst, Jr., Guardian Ad Litem for Donna Karen Heath (Minor), being represented by Lamar Jones and Everette L. Wooten, Jr., Attorneys at Law; and defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton being represented by David S. Henderson and Nelson W. Taylor, III, Attorneys at Law; and defendant L. J. Moore being represented by Raymond E. Sumrell and James R. Sugg, Attorneys at Law;

AND, it appearing to the Court that all parties to this action are properly before the Court, and that the Court has jurisdiction of the parties and of the subject matter of this action;

AND, it appearing to the Court that by an Order previously entered in this action on October 8, 1979, it was determined that the issues of title

and damages in this action should be determined at separate trials with the issue of title to be first determined at the instant trial;

AND, plaintiff and all defendants and their respective counsel appearing at the call of the case for trial, and said counsel then representing to the Court that this action was in all respects ready for trial;

AND, plaintiff and defendants having entered into further stipulations as appear in the Order on Final Pre-Trial Conference and the Addendum thereto;

AND, plaintiff having presented evidence sufficient to locate the lands in controversy in this action and, thereby, invoke the presumption of title in plaintiff conferred by North Carolina General Statutes § 146-79;

AND defendants being required, thereby, to prove a good and sufficient title to said property in themselves in order to overcome such presumption;

DEFENDANTS HEATHS' EXCEPTION NO. 4

DEFENDANTS TAYLOR AND DENTON EXCEPTION NO. 12

DEFENDANT MOORE'S EXCEPTION NO. 4

AND, defendants Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (Minor) and Larry T. Heath having presented evidence in support of their claim of title to the aforesaid lands and having rested;

AND, defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton having presented evidence in support of their claim of title to the aforesaid lands and having rested;

AND, defendant L.J. Moore, having presented evidence in support of his claim of title to the aforesaid lands and having rested;

AND, plaintiff having moved for directed verdicts in its favor pursuant

to Rule 50(a), North Carolina Rules of Civil Procedure, at the close of evidence on behalf of defendants Alice S. Heath, Clifford Earl Heath, Donna Karen Heath (Minor) and Larry T. Heath, and again at the close of evidence on behalf of defendants J. T. Taylor, Jr., Zachary Taylor and Gordon H. Denton, and again at the close of evidence on behalf of defendant L. J. Moore, and having at that time renewed its former motions, all for the reason that all defendants failed to establish any good and sufficient title to the aforesaid lands in themselves as against plaintiff;

AND, the Court having considered the pleadings, stipulations, evidence, exhibits presented and arguments of counsel for plaintiff and defendants;

AND, the Court being of the opinion that the motions should be granted, and

that there is no just reason for delay in rendering this judgment adjudicating the ownership of title to and the right to possession of the lands involved in this action;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's motions for directed verdicts against all defendants are allowed.

DEFENDANT TAYLOR & DENTON'S EXCEPTION NO. 13

DEFENDANT MOORE'S EXCEPTION NO. 5.

2. Plaintiff, State of North Carolina, is the owner in fee simple of and entitled to possession of that certain tract or parcel of land located in Township No. 3, in Craven County, North Carolina, and more particularly described as follows:

BEGINNING at an iron pipe with marked trees as reference, said iron pipe being the northwestern corner of the property herein described and a corner in the

eastern line of the Wilson Hodges heirs' property, and said iron pipe having North Carolina Plane Coordinates of N 547,689.49 and E 2,482,976.92; running thence S 19° 16' 49" E 8,300.14 feet along the eastern property line of Wilson Hodges heirs' to a concrete monument, the southeastern corner of Wilson Hodges heirs' property, thence N 57° 21' 39" W 2,040.38 feet along the southern property line of Wilson Hodges heirs to a concrete monument, the northeastern corner of Weyerhaeuser property in Wilson Hodges heirs' south line; thence S 29° 08' 28" W 511.72 feet to an iron pipe, the northwestern corner of Halifax Paper Company property in Weyerhaeuser's eastern property line; thence S 57° 04' 15" E 3,252.07 feet along the northern line of Halifax Paper Company property to an iron pipe by a marked pine tree, the northeast corner of Halifax Paper Company property; thence S 28° 35' 21" W

1,838.18 feet along the eastern line of Halifax Paper Company property to an iron pipe, the southeastern corner of Halifax Paper Company property; thence N 57° 14' 49" W 3,250.77 feet along the southern line of Halifax Paper Company property to an iron pipe, a common corner for Halifax Paper Company and Weyerhaeuser; thence S 03° 14' 49" E 2,361.50 feet along the eastern line of Halifax Paper Company property to an iron pipe, the southeastern corner of Halifax Paper Company in the northern line of W. Guy Warmack property; thence along the northern line of W. Guy Warmack property the following calls: N 69° 10' 40" E 108.76 feet to an iron pin; N 69° 11' 11" E 204.00 feet to an iron pin; N 46° 46' 11" E 210.00 feet to an iron pin; S 83° 23' 49" E 369.00 feet to an iron pin; N 60° 51' 11" E 431.00 feet to an iron pin, the northeastern corner of W. Guy Warmack property and the northwestern corner of John T. Taylor property; thence along the northern line of John T. Taylor property the following

calls: N 60° 51' 11" E 310.00 feet
to an iron pin; S 72° 18' 49" E 280.00
feet to an iron pin; S 66° 28' 49"
E 583.00 feet to an iron pin; S 49°
53' 49" E 661.00 feet to a concrete
monument, a corner for White, Jenkins
and Lee property in the Northern
line of John T. Taylor property;
thence N 00° 25' 49" W 239.17 feet
along the western line of White,
Jenkins and Lee property to a rail-
road iron, the northwestern corner
of White, Jenkins and Lee Property;
thence S 66° 46' 24" E 2,397.66 feet
along the northern line of White,
Jenkins and Lee property to a rail-
road iron, a corner for White, Jenkins
and Lee property; thence S 86° 23' 54"
E 7,193.19 feet continuing along the
northern line of White, Jenkins and
Lee property to an iron pipe, the
northeastern corner of White, Jenkins
and Lee property in the western
line of D. E. Mitchell property;
thence N 08° 32' 18" E 2,092.94
feet along the western line of D. E.
Mitchell property to an iron pipe;
thence S 83° 51' 10" E 2,701.50

feet along the northern line of D. E. Mitchell property to an iron pipe, the southwest corner of land claimed by Bernice D. Bryan and Earl G. Mitchell; thence N 10° 20' 57" E 4,711.69 feet along the western line of land claimed by Bernice D. Bryan and Earl G. Mitchell to an iron pipe, the northwestern corner of land claimed by Bernice D. Bryan and Earl G. Mitchell in the southern line of property of Janie Estelle Wood; thence N 55° 20' 07" W 1,039.63 feet to an iron pin in southern line of Janie Estelle Wood property; thence continuing along the southern line of Janie Estelle Wood property the following calls: N 71° 01' 38" W 1,364.93 feet to an iron pin; thence N 71° 53' 46" W 1,073.08 feet to an iron pin; thence S 78° 19' 55" W 725.88 feet to an iron pin; thence S 65° 23' 36" W 666.48 feet to an iron pin; thence S 32° 45' 22" W 938.30 feet to an iron pin; thence N 44° 53' 22" W 2,055.85 feet to an iron pipe, the western most corner of Janie Estelle Wood property; thence N 27° 00' 00" E 352.08 feet along the western line of

Janie Estelle Wood property to an iron pipe in the southern line of International Paper Company property; thence N 49° 05' 29" W 438.36 feet along the southern line of International Paper Company property to an iron pipe, the southwestern corner of International Paper Company property and the southeastern corner of Bettie Russell Hazelwood property; thence N 59° 05' 24" W 3,460.12 feet along the southern line of Bettie Russell Hazelwood property to an iron pipe; thence N 71° 52' 05" W 835.76 feet along the southern line of Bettie Russell Hazelwood to an iron pipe; thence N 72° 03' 44" W 5,925.14 feet along the southern line of Bettie Russell Hazelwood property to an iron pipe in the eastern line of Wilson Hodges heirs' property, the point of beginning; and containing 2,705.0254 acres, as shown on survey by Robert T. Newcomb, Jr., dated April 15, 1981

DEFENDANTS HEATHS' EXCEPTION NO. 5

DEFENDANTS TAYLOR & DENTON'S EXCEPTION
NO. 14

DEFENDANT MOORE'S EXCEPTION NO. 6

3. Plaintiff's title to the above-described tract or parcel of land is free and clear of any and all estates, rights, title, claims or interests of any of the parties defendants in this action.

DEFENDANTS TAYLOR & DENTON'S EXCEPTION
NO. 15

DEFENDANT MOORE'S EXCEPTION NO. 7

4. Defendants J. T. Taylor, Jr. and Zachary Taylor, their agents, servants and employees, and any persons acting in concert with them, are hereby permanently enjoined from going upon the lands of the plaintiff hereinabove described for any purpose whatsoever, and are particularly permanently enjoined from cutting and removing any timber, shrubs, trees, lumber, or plants therefrom or otherwise trespassing thereupon in any manner whatsoever.

5. This cause shall be retained upon the docket of the Superior Court of Craven County for determination of any damages to which plaintiff may be entitled against the several defendants, or any of them, and for determination of plaintiff's motions for sanctions against some of the defendants on account of their refusal to admit those matters in plaintiff's Request for Admissions, as appear of record.

6. That the costs of this action shall be taxed by the Clerk against the several defendants.

BY CONSENT of all parties, this Judgment is signed out of Session, this 21st day of August, 1981.

s/ ROBERT D. ROUSE, JR. (ORIG.)
Judge Presiding and
Resident Superior Court Judge
of the 3rd Judicial District

APPEAL ENTRIES

To the Court's action in allowing plaintiff's motions for directed verdict as to their respective claims of title, and to the signing and entry of this Judgment, all defendants in apt time objected and excepted and gave notice of appeal to the North Carolina Court of Appeals. Defendants are allowed 100 days from and after the date of entry of this Judgment within which to prepare and serve case on appeal. Plaintiff is allowed 30 days thereafter within which to prepare and serve counter case or exceptions. Appeal bond is set at \$200.00.

This 21st day of August, 1981.

s/ ROBERT D. ROUSE, JR. (Orig.)
Judge Presiding and Resident
Superior Court Judge of the
3rd Judicial District

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Filed: 15 February 1983

STATE OF NORTH CAROLINA,
Plaintiff

v.

Craven County
No. 78CVS280

J. T. TAYLOR, JR., ZACHARY
TAYLOR, and GORDON H. DENTON,
Defendants

and

L. J. MOORE, BOY'S RANCH
FOUNDATION, ALICE S. HEATH,
CLIFFORD EARL HEATH, and
DONNA KAREN HEATH (Minor),
Additional Defendants

and

SAMUEL L. WHITEHURST, JR.,
Guardian Ad Litem for DONNA
KAREN HEATH (Minor),
Additional Defendants

and

FLOYD D. WHITE,
Intervenor Defendant

and

LARRY T. HEATH,
Intervenor Defendant

and

L. J. MOORE,
Cross Complainant &
Third Party
Plaintiff

v.

STATE OF NORTH CAROLINA,
Plaintiff & Third
Party Defendant

and

J. T. TAYLOR, JR., ZACHARY
TAYLOR, and GORDON H. DENTON

and

ALICE S. HEATH, CLIFFORD EARL
HEATH, and DONNA KAREN HEATH
(Minor)

and

FLOYD D. WHITE,
Third Party
Defendants

Appeal by defendants from Rouse, Judge.
Judgment entered 21 August 1981 in Superior
Court, Craven County. Heard in the Court
of Appeals 18 January 1983.

The State of North Carolina instituted this action to remove a cloud on title to certain land located in Craven County, to restrain trespass and timber removal, and to recover damages for timber wrongfully removed. The original defendants were J. T. Taylor, Jr., Zachary Taylor, and Gordon H. Denton (Taylor Group). L. J. Moore; Boy's Ranch Foundation; and Alice S. Heath, Clifford Earl Heath, and the minor Donna Karen Heath were joined as defendants upon motion by the Taylor Group. Later, Larry T. Heath was allowed to intervene; he aligned himself with the other Heaths in what will be referred to as the Heath Group. Intervenor Floyd White and Boy's Ranch Foundation were subsequently dismissed from the case.

Each group of defendants filed answers averring that they were the owners of the tract in question. Defendant

Moore's answer asserted a cross-claim against the plaintiff and the other defendants for trespass and for damages for timber removal.

The issues of title and damages were severed for separate trial. At trial before the jury on the issue of title, the court denied the motions of all defendants for a directed verdict and granted the State's motion for directed verdict at the close of all the evidence. Judgment was entered declaring the State to be the fee simple owner of the tract, consisting of 2,705.0254 acres.

Defendants Taylor Group, Heath Group and Moore appeal.

Attorney General Edmisten, by Special Deputy Attorney General T. Buie Costen, Assistant Attorney General Roy A. Giles, Jr., and Assistant Attorney General R. Bryant Wall, for the State.

Henderson & Baxter, P.A., by David S. Henderson for defendant-appellants

J. T. Taylor, Jr., Zachary Taylor, and Gordon H. Denton.

Broughton, Wilkins & Crampton, P.A.,
by J. Melville Broughton, Jr., for defendant-
appellant L. J. Moore.

Jones and Wooten, by Everette L.
Wooten, Jr. for defendant-appellants Alice
S. Heath, Clifford Earl Heath, Larry T.
Heath and Donna Karen Heath (minor).

ARNOLD, Judge.

G.S. 146-79 provides in pertinent
part:

In all controversies and suits for
any land to which the State or any
State agency or its assigns shall be
a party, the title to such lands
shall be taken and deemed to be in
the State or the State agency or
its assigns until the other party
shall show that he has a good and
valid title to such lands in himself.

Relying upon the presumption created by G.S.
146-79, the State presented the testimony

of Robert T. Newcomb, a surveyor, who surveyed the land in question and described monuments he found and those he placed on the ground; he also testified concerning an aerial photograph he prepared and a survey map delineating the boundaries of the land. On cross-examination, he testified that the land was located within the boundaries of Land Grant No. 819. This evidence was sufficient to withstand defendants' motions for a directed verdict.

We hold that the defendants cannot succeed in their argument that the statutory presumption created by G.S. 146-97 is unconstitutional. The presumption is reasonable since title to all lands in North Carolina, except those previously granted by the Crown, originated from the State, and the State has ultimate title to the soil. *Moore v. Byrd*, 118 N.C. 688, 23 S.E. 968 (1896). In addition, "the statute does

not authorize a 'taking' of property. The presumption of title in the State lasts only until the rival claimant establishes valid title in himself." State v. Chadwick, 31 N.C. App. 398, 399, 229 S.E.2d 255, 256 (1976).

Each group of defendants offered evidence in support of their claims to title. Evidence presented by the Taylor Group which they contend established their chain of title was as follows:

1. Grant No. 819 from the State of North Carolina to David Allison.
2. David Allison's death without having disposed of the lands described in Grant No. 819.
3. Trust deed dated 10 December 1908 from the Allison heirs and State Board of Education to George H. Roberts, Trustee. This deed was allegedly executed in settlement of a dispute between the Allison heirs and the State.
4. Recorded deed from Florence E. Phipps (a purported Allison heir) to E. S.

English dated 1 January 1967.

5. Special Partition Proceeding No. N-1-232.
6. Recorded deed from Bernard B. Hollowell, Commissioner to E. S. English dated 17 November 1967.
7. Recorded deed from E. S. English to G. H. Denton dated 13 December 1967.
8. Recorded deed from G. H. Denton to Zachary Taylor dated 24 June 1968.
9. Adverse possession by the defendants Taylor and Denton.

The Taylors contend that the State was divested of title by virtue of the trust deed dated 10 December 1908; thereafter, the remaining deeds constituted color of title in defendants Taylor and Denton.

There arguments fail for several reasons. Chiefly, to claim title to land through adverse possession under color of title against the State, the party claiming

title must possess the land identified under known and visible lines and boundaries for 21 years as provided in G.S. 1-35. Since the Taylor Group first entered the land in 1968, clearly they have not possessed the land for the requisite period of time against the State.

Having failed to prove adverse possession against the State, the Taylors attempt to prove adverse possession under color of title against the trustee and reap the benefit of the shorter seven year possession period provided in G.S. 1-38. Again, the Taylors fail.

The description in the Phipps deed upon which the Taylors rely to claim title to the entire tract in question reads:

Beginning at the George Pollock Patent beginning corner and runs west 1805 feet; then East 815 feet to a branch; then down said branch to the beginning, containing

15 1/2 acres.

And any and all other land and interest in land within Craven County, North Carolina, owned by David Allison at the time of his death

The Taylors cannot claim color of title to "any and all other land and interest in land . . . owned by David Allison" due to the insufficiency of the description and the lack of any reference to some source from which the deficiency in the description may be supplied. Carrow v. Davis, 248 N.C. 740, 105 S.E. 2d 60 (1958). Furthermore, the deed from English to Denton refers to the Hollowell deed, which conveys those lands particularly described in the Phipps deed. The words "particularly described," given their ordinary, natural and customary meaning, operated to convey only the 15 1/2 acre tract, and not the lands involved in this action.

Moreover, the Taylor Group presented the testimony of Bryant Wall, Assistant Attorney General, that he found a sheriff's deed to the governor of North Carolina dated 25 September 1801, conveying the lands covered by Grant No. 819 to the State.

Defendant Moore offered evidence of a chain of title based upon the 1908 trust deed common to the Taylor chain. However, the 1908 trust deed was ineffective to convey title since it lacked evidence of full execution, recordation or delivery. Moore made no claim of title by possession.

The Heath Group offered evidence in support of their claims to title through adverse possession.

Larry Heath testified that he bought land next to the lands in question in 1943 and allowed his cattle to roam onto the lands in question "a good long ways." He fenced the land he bought and part of the lands in

question but the fence did not go "all the way around." He cut timber along the edges of the property in question every year for 15 to 20 years, beginning in or about 1945 and again in 1965. He built some roads on the property after 1958 and gave the Forestry Service permission to run fire lanes across the property in the early 1960's. He paid taxes on 500 acres of the property, beginning with a payment for five years back taxes in 1958 and every year thereafter until 1969, when he and his brother Earl were restrained from entering the property by a temporary restraining order. After the temporary restraining order was lifted, he reentered the property and continued to graze livestock, cut timber and build roads. Others testified that they observed the Heath brothers carry on these activities on the property.

The Heath Group's evidence fails to make a case of simple adverse possession

without color of title under known and visible boundaries. Heath testified that someone else had used the property and built some roads. Heath also testified on cross-examination that he and his brother gave a deed for the property to a Mr. H. D. Dickerson of Durham County in 1965. He was getting "fed up with the property" because "it had been nothing but trouble for me, and the best thing for me to do was to get out of it." The Heaths' possession was, therefore, not continuous, uninterrupted, or exclusive.

Heath also testified that he and his brother Earl exchanged deeds for the property in 1958 in an attempt to create some title to the property. This exchange of deeds was fraudulent and made with full knowledge by each party thereto that neither had any title to the land. Larry Heath testified:

Earl knew when he gave me his deed
and I knew when I received it that

Earl didn't own that property.
Earl knew when I gave him my deed,
and when he received it, that I
didn't own the property described
in that deed.

Exchange of those deeds cannot constitute color of title. In order for a deed to constitute color of title, the grantee must enter the land under the deed in good faith. Trust Co. v. Parker, 235 N.C. 326, 69 S.E. 2d 841 (1952). Good faith entry under the deed is lacking here.

Each group of defendants failed to present sufficient evidence in support of their claims to title. Therefore the granting of a directed verdict in favor of the State was proper.

We have reviewed the contentions of the Taylor Group that the trial court erroneously excluded certain testimony and find no prejudicial error.

The contention of the Heath Group that evidence of seven years adverse possession under color of title or twenty years adverse possession not under color of title is sufficient to rebut the presumption created by G.S. 146-79 is also without merit.

For the foregoing reasons, the judgment of the trial court is

Affirmed.

Judges HILL and WHICHARD concur.

No. 161P83

THREE-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA	)	JUDGMENT DISMISSING
	)	APPEAL ON MOTION OF
v	)	ATTORNEY GENERAL
	)	AND DENYING PETITION
J. T. TAYLOR, JR.,	)	FOR DISCRETIONARY
<u>ZACHARY TAYLOR, and</u>	)	REVIEW
<u>GORDON H. DENTON,</u>)	
Defendants, et al	)	(823SC246)
)	
(For complete Title see)	
Attachment))	
)	

Upon consideration of the defendant's notice of appeal from the North Carolina Court of Appeals, filed in this matter pursuant to G.S. 7A-30, and Attorney General's motion to dismiss the appeal for lack of a substantial constitutional question, and upon consideration of defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G.S. 7A-31, the following order was

entered and is hereby certified to the North Carolina Court of Appeals: Attorney General's motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 31st day of May 1983.

s/ Frye, J.
For the Court"

Defendant's petition for discretionary review is

"Denied by order of the Court in conference, this the 31st day of May 1983.

s/ Frye, J.
For the Court"

Therefore, it is considered and adjudged further that defendant do pay the sum of Nine and no/100 Dollars (\$9.00) and that execution issue therefor.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 2nd day of June 1983.

/s/
J. Gregory Wallace
Clerk of the Supreme
Court

Copy to;

North Carolina Court of Appeals
Henderson & Baxter, Attorneys at Law
Nelson W. Taylor, III, Attorney at Law
Broughton, Wilkins & Webb, Attorneys at Law
Jones & Wooten, Attorneys at Law
T. Buie Costen, Special Deputy Attorney General
Roy A. Giles, Jr., Assistant Attorney General

STATE OF NORTH CAROLINA, Plaintiff

v

J. T. TAYLOR, JR., ZACHARY TAYLOR,
and GORDON H. DENTON, Defendants
and
L. J. MOORE, BOY'S RANCH FOUNDATION,
ALICE S. HEATH, CLIFFORD EARL HEATH, and
DONNA KAREN HEATH (Minor), Additional Defendants
and
SAMUEL L. WHITEHURST, JR., Guardian Ad Litem for
DONNA KAREN HEATH (Minor), Additional Defendants
and
FLOYD D. WHITE, Intervenor Defendant
and
LARRY T. HEATH, Intervenor Defendant
and
L. J. MOORE, Cross Complainant & Third Party
Plaintiff

v

STATE OF NORTH CAROLINA, Plaintiff & Third
Party Defendant
and
J. T. TAYLOR, JR., ZACHARY TAYLOR,
and GORDON H. DENTON,

and
ALICE S. HEATH, CLIFFORD EARL HEATH, and
DONNA KAREN HEATH (Minor),
and FLOYD D. WHITE, Third Party Defendants

SUPREME COURT OF NORTH CAROLINA

J. GREGORY WALLACE, CLERK
AREA CODE 919 733-3723 P.O. BOX 2170
RALEIGH, NORTH CAROLINA 27602

Mrs. Peggy N. Byrd
Chief Deputy Clerk

Mrs. Shaula A. Pennington

Mrs. Patricia J. Hadley
Deputy Clerks

September 28, 1983

Mr. David S. Henderson
Henderson & Baxter
P. O. Drawer U
New Bern, NC 28560

Mr. Nelson W. Taylor, III
Attorney at Law
P. O. Box 3489
Morehead City, NC 28557

Taylor Re: State v Taylor,
& Denton
No. 161P83

Dear Gentlemen:

Defendants' Motion for Reconsideration
of Order Dismissing Appeal and Denying Peti-
tion for Discretionary Review has been filed

and the following order entered:

"Denied by order of the Court in
conference this the 27th day of
September 1983.

s/ Frye, J.
For the Court"

Very truly yours,

/s/
J. GREGORY WALLACE
Clerk for the Supreme Court

JGW/tjh

xc: Broughton, Wilkins & Webb, Attorneys at Law
Mr. T. Buie Costen, Special Deputy Attorney
General
Mr. Roy A. Giles, Jr., Assistant Attorney
General
Mr. R. Bryant Wall, Assistant Attorney
General
Jones & Wooten, Attorneys at Law
Mr. Ralph White, Court Reporter
West Publishing Company

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Three B District

STATE OF NORTH CAROLINA,)	
)	
Plaintiff-Appellee,)	
	)	Craven County
v.	)	No. 78CVS280
)	
J.T. TAYLOR, JR., et al.,)	
)	
Defendants-Appellants.)	

NOTICE OF APPEAL TO THE
UNITED STATES SUPREME COURT

- TO: (1) CLERK OF THE NORTH CAROLINA COURT
OF APPEALS, Three B District,
P.O. Box 2779,
Raleigh, North Carolina 27611;
- (2) EVERETTE L. WOOTEN, JR.
JONES & WOOTEN
Attorneys at Law
P.O. Box 3073
Kinston, North Carolina 28501
Attorney for Defendants-Appellants
Larry T. Heath, Alice S. Heath,
Clifford Earl Heath, Donna Karen
Heath (a Minor-Guardian ad Litem
Sam L. Whitehurst);

- (3) T. BUIE COSTEN
SPECIAL DEPUTY ATTORNEY GENERAL
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Attorney for Plaintiff-Appellee
State of North Carolina.

The Supreme Court of North Carolina having denied the defendants' appeal and petition for discretionary review, you are hereby notified that an appeal of this case is being taken to the United States Supreme Court on or about December 24, 1983. You are further advised that:

1. the parties taking the appeal are the defendants J.T. Taylor, Jr., Zachary Taylor, Gordon H. Denton, and L.J. Moore;

2. the judgment appealed from was rendered on February 15, 1983, by the North Carolina Court of Appeals, Three B. District, in State v. Taylor, ___ N.C. App. ___, 300 S.E.2d 42 (1983);

3. the statute pursuant to which

this appeal is taken is 28 U.S.C. § 1257(2).

J.T. TAYLOR, JR., ZACHARY
TAYLOR, GORDON H. DENTON,
and L.J. MOORE,
Defendants-Appellants,

By: /s/
NELSON W. TAYLOR III
Attorney at Law
P.O. Box 3489
Morehead City,
North Carolina 28557
(919) 726-0001
Attorney for
Defendant-Appellants
J.T. TAYLOR, JR., ZACHARY
TAYLOR, and GORDON H. DENTON

By: /s/
DAVID S. HENDERSON
HENDERSON & BAXTER, P.A.
607 Broad Street
P.O. Drawer U
New Bern,
North Carolina 28560
(919) 638-5792
Attorney for Defendant-
Appellants
J.T. Taylor, Jr., Zachary
Taylor, and Gordon H. Denton

By: /s/
J. MELVILLE BROUGHTON
BROUGHTON, WILKINS & CRAMPTON,
P.A.

19th Floor; Century
Plaza Building
Fayetteville Street Mall
P.O. Box 2387
Raleigh, North Carolina 27602
(919) 833-2752
Attorney for Defendant-
Appellant
L.J. Moore

Filed: December 19, 1983

NO. 823SC246

NORTH CAROLINA COURT OF APPEALS

Three B District

STATE OF NORTH CAROLINA,)	
)	
Plaintiff-Appellee,)	
)	
v.	)	Craven County
	)	No. 78CVS280
J.T. TAYLOR, JR., et al.,)	
)	
Defendants-Appellants)	

CERTIFICATE OF SERVICE

This is to certify that I have this date duly served a copy of the foregoing NOTICE OF APPEAL upon the parties named below by depositing a copy in the United States Mail in a first-class postage paid envelope addressed to each of the parties at the following addresses:

- (1) CLERK OF THE NORTH CAROLINA COURT OF APPEALS, Three B District,
P.O. Box 2779,
Raleigh, North Carolina 27611;

- (2) EVERETTE L. WOOTEN, JR.
JONES & WOOTEN
Attorneys at Law
P.O. Box 3073
Kinston, North Carolina 28501
Attorney for Defendants-Appellants
Larry T. Heath, Alice S. Heath,
Clifford Earl Heath, Donna Karen
Heath (a Minor-Guardian ad Litem
Sam L. Whitehurst);
- (3) T. BUIE COSTEN
SPECIAL DEPUTY ATTORNEY GENERAL
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Attorney for Plaintiff-Appellee
State of North Carolina.

This the 16th day of December 1983.

/s/

NELSON W. TAYLOR III
Attorney at Law
P.O. Box 3489
Morehead City,
North Carolina 28557
(919) 726-0001
Attorney for Defendant-
Appellants
J.T. Taylor, Jr., Zachary
Taylor, and Gordon H. Denton

/s/

J. MELVILLE BROUGHTON
BROUGHTON & WILKINS & CRAMPTON
19th Floor, Century Plaza
Building

Fayetteville Street Mall
P.O. Box 2387
Raleigh, North Carolina 27602
(919) 833-2752
Attorney for Defendant-
Appellant
L.J. Moore